

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GABRIEL CALVIN SMITH,

Defendant.

CR 15-13-BU-DLC

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on May 19, 2016. Neither party objected and therefore they are not entitled to *de novo* review of the record. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

This Court will review the Findings and Recommendation for clear error.

*McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch recommended this Court accept Gabriel Calvin Smith’s guilty plea after Smith appeared before him pursuant to Federal Rule of Criminal Procedure 11, and entered a plea of guilty to one count of possession with intent to

distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) (Count II) as set forth in the Indictment.

I find no clear error in Judge Lynch's Findings and Recommendation (Doc. 50), and I adopt them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Gabriel Calvin Smith's motion to change plea (Doc. 34) is GRANTED and Gabriel Calvin Smith is adjudged guilty as charged in Count II of the Indictment.

DATED this 7<sup>th</sup> day of June, 2016.



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Dana L. Christensen, Chief District Judge  
United States District Court